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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 BRENTON D. THOMPSON,

12 Plaintiff,

13 v.

14 DANIEL L. WILLIAMS, *et al*,

15 Defendants.

Case No. C06-5476FDB-KLS

ORDER REGARDING  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGEMENT

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17 This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. §  
18 636(b)(1), Local Magistrates Rules MJR 3 and 4, and Rule 72 of the Federal Rules of Civil Procedure.  
19 The case is before the Court on plaintiff's filing of a motion for summary judgment. (Dkt. #27) After  
20 reviewing plaintiff's motion, defendants' response to that motion, plaintiff's reply thereto, and the balance  
21 of the record, the Court finds and orders as follows:

22 Plaintiff filed his complaint with this Court on August 21, 2006. (Dkt. #1). He was granted *in*  
23 *forma pauperis* status on October 17, 2006 (Dkt. #4), and service of his complaint was ordered that same  
24 day (Dkt. #6). Defendants filed their answer on December 19, 2006. (Dkt. #23). On December 29, 2006,  
25 the Court issued a pretrial order setting a deadline of May 29, 2007, by which all discovery was to be  
26 completed, and a deadline of June 29, 2007, by which all dispositive motions were to be filed. (Dkt. #25).  
27 On January 22, 2007, plaintiff filed his motion for summary judgment.

28 Summary judgment shall be rendered if the pleadings, exhibits, and affidavits show that there is no  
genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

1 Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 56(c). When a motion for summary judgment is  
2 supported as provided in Fed. R. Civ. P. 56, an adverse party may not rest upon the mere allegations or  
3 denials of his pleading, but his response, by affidavits or as otherwise provided in Fed. R. Civ. P. 56, must  
4 set forth specific facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56(e).

5 In his motion for summary judgment, plaintiff asserts there are no genuine issues of material fact as  
6 to his right to freely exercise his religion and to the equal protection of the law, and he is entitled to  
7 judgment as a matter of law. In their response, defendants counter that no discovery has been conducted  
8 in this matter, and that they require time to conduct reasonable discovery in order to be able to respond to  
9 plaintiff's motion. Relying on Fed. R. Civ. P. 56(f), defendants argue plaintiff's motion is premature, and  
10 thus should be denied or continued until such time as reasonable discovery can be made.

11 Fed. R. Civ. P. 56(f) reads as follows:

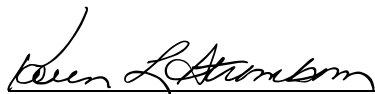
12 **(f) When Affidavits are Unavailable.** Should it appear from the affidavits of a party  
13 opposing the motion that the party cannot for reasons stated present by affidavit facts  
14 essential to justify the party's opposition, the court may refuse the application for  
judgment or may order a continuance to permit affidavits to be obtained or depositions  
to be taken or discovery to be had or may make such other order as is just.

15 Thus, defendants are correct that Fed. R. Civ. P. 56(f) provides for dismissal or continuance of a summary  
16 judgment motion to allow for proper discovery to be had. Fed. R. Civ. P. 56(f), however, expressly states  
17 that the party opposing the motion must present by affidavit the facts essential to justify opposition. Here,  
18 defendants have not presented the affidavit so required.

19 Accordingly, defendants hereby are ordered to file with the Court and serve on plaintiff such an  
20 affidavit by **no later than March 29, 2007**. Any reply thereto shall be filed with the Court and served on  
21 defendants by **no later than April 5, 2007**. The Clerk, therefore, hereby is directed to re-note plaintiff's  
22 motion for summary judgment (Dkt. #27) for consideration on **April 6, 2007**.

23 The Clerk is directed to send a copy of this Order to plaintiff and counsel for defendants.

24 DATED this 1st day of March, 2007.

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28 Karen L. Strombom  
United States Magistrate Judge